

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH AL DUKES,

Defendant-Appellant.

UNPUBLISHED

June 19, 2007

No. 268810

Wayne Circuit Court

LC No. 05-010686-01

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted following a bench trial of carrying a concealed weapon (CCW), MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. Defendant was sentenced to one year probation for CCW, life time probation for felon in possession of a firearm, and 5 years in prison for felony-firearm, second offense. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Defendant was observed by police officers walking down the middle of a street, thereby impeding traffic. Impeding traffic is a civil infraction. MCL 257.676b. He was detained and a LEIN¹ check was performed. The LEIN check revealed outstanding traffic warrants, and defendant was arrested. A subsequent search uncovered a handgun in his waistband. The handgun was the basis of this prosecution.

Defendant first argues that his trial counsel was ineffective for failing to move to suppress the handgun. Defendant argues that while the police may run a LEIN check on a motor vehicle driver during a routine traffic stop, no authority provides that a similar check can be run on a pedestrian detained for a civil infraction.

To establish a claim of ineffective assistance of counsel, a defendant must show that his counsel's performance fell below an objective standard of reasonableness and that counsel's representation prejudiced him so as to deprive him of a fair

¹ Law Enforcement Information Network.

trial. A defendant must show that, but for the error, the result of the proceedings would have been different and that the proceedings were fundamentally unfair or unreliable. [*People v Williams*, 240 Mich App 316, 331; 614 NW2d 647 (2000) (Citations omitted).]

Contrary to defendant's assertion, the usefulness of a LEIN check has not been judicially circumscribed to simply verifying that a motor vehicle driver has a valid driver's license or that the vehicle involved is not stolen. In *People v Davis*, 250 Mich App 357, 367; 649 NW2d 94 (2002), this Court made the following finding:

“[a] LEIN check is an unobtrusive investigative tool employed by the police to retrieve information regarding an individual's driving record and to determine whether there are any outstanding warrants for his arrest—all matters of public record. As such, a LEIN check does not involve an unlawful disregard for individual liberties.” [Quoting *People v Walker*, 58 Mich App 519, 523-524; 228 NW2d 443 (1975).]

Both *Davis* and *Walker* note that a LEIN check is “an unobtrusive investigatory tool” that can be used “to determine whether there are any outstanding warrants for . . . arrest.” The legitimate police function of determining whether outstanding arrest warrants exist is not circumscribed by the method of transportation (by vehicle or by foot) being employed by the subject of the LEIN check.

Where a LEIN check can be completed within the time frame needed for a police officer to complete the duties attendant to the stop of a pedestrian, then the check is not improper. See *Michigan v Summers*, 452 US 692, 700 n 12; 101 S Ct 2587; 69 L Ed 2d 340 (1981). There is nothing in the record below that indicates that the completion of the police duties attendant to this stop² was improperly prolonged by the LEIN check.

We also reject defendant's argument that vacation of his conviction and sentences is required because the trial court failed to address his “temporary innocent possessor” defense in its findings. Defendant's argument is predicated on the momentary innocent possessor defense recognized for CCW prosecutions in *People v Coffey*, 153 Mich App 311; 395 NW2d 250 (1986). However, our Supreme Court has just overruled *Coffey* on this very basis. *People v Hernandez-Garcia*, 477 Mich 103; 728 NW2d 406 (2007) (holding “that the trial court correctly instructed the jury that momentary innocent possession of a concealed weapon is not a defense to a charge of unlawfully carrying a concealed weapon”). Moreover, there is nothing in the text of either MCL 750.227b or MCL 750.227f that establishes such a defense for either of those crimes. As such the error can have no barring on the outcome of this appeal and is therefore harmless.

² MCL 257.742(1).

Affirmed.

/s/ Patrick M. Meter

/s/ Kirsten Frank Kelly

/s/ Karen M. Fort Hood